



Software Licensing Conditions

Encodian Indxr

Last updated: 26th September 2023

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Licence.

Applicable Data Protection Laws: all applicable data protection laws and regulations in any jurisdiction.

Business: the business of the Customer as at the Commencement Date.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: the date on which the Customer receives confirmation in writing from Encodian that Encodian has accepted the Customer's order for use of the Software.

Commencement Date: the date on which the Customer receives confirmation in writing from Encodian that Encodian has accepted the Customer's order for use of the Software, or, the date on which the Customer submits the Order Acceptance Form to Encodian as the case may be.

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 27 (Jurisdiction) (inclusive).

Confidential Information: information of commercial value, in whatever form or medium, disclosed by a party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of Encodian's information), information pertaining to customers, pricing and marketing information relating to the Software or any of its constituent parts and the Source Code relating to the Software or any such parts.

Contract Year: any 12-month period ending on any anniversary of the Commencement Date.

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.

Customer: the organisation that uses the Software under a Free Trial or having paid Encodian a Licence Fee.

Customer's System: the Customer's infrastructure, network, hardware and software environment including devices operated by the Licensed Users.

Documentation: any operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied or made available by Encodian in connection with this Licence.

Encodian: means Encodian Solutions Limited, a company incorporated in England and Wales under company number 10200243 and having its registered office at Blythe Valley Innovation Centre, Central Boulevard, Blythe Valley Business Park, Solihull, England, B90 8AJ.

Encodian's Acceptable Use Policy: Encodian's Acceptable Use Policy for the Customer's use of the Software made available to the Customer by Encodian online linked to [here](#).

Encodian's Online Portal: means the online portal used by the Customer to manage its Subscription linked to [here](#).

Free Trial: the opportunity granted by Encodian for the Customer (and its Licensed Users) to use the Software free of charge so that the Customer can evaluate whether the Software meets its needs.

Free Trial Period: the duration of the Free Trial as agreed to by Encodian.

Initial Licence Term: the initial term of the Licence offered by Encodian and accepted by the Customer when the Customer placed its order for a licence to use the Software:

- (a) where the Customer has agreed to pay the Licence Fee on a monthly basis, 3 calendar months; or
- (b) where the Customer has agreed to pay the Licence Fee on an annual basis, 1 year.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence: this licence between Encodian and the Customer for the licensing of the Software in accordance with these Conditions.

Licence Fee: the monthly or annual licence fee offered by Encodian and accepted by the Customer when the Customer placed its order for a licence to use the Software.

Licence Term: the Free Trial Period (if any), the Initial Licence Term and any subsequent Renewal Periods.

Licensed Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Licensed Software and the Documentation.

Maintenance Release: a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by Encodian in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Open Source Software: any software programs which are licensed under any form of open source licence meeting the Open Source Initiative's open source definition from time to time.

Order Acceptance Form: the form that Encodian may provide to the Customer, if required, that the Customer must complete, sign, and submit to Encodian to enter into this agreement.

Permitted Purposes: has the meaning given in clause 7.1.

Renewal Period: a period beyond the Initial Licence Term during which this Licence shall continue pursuant to clause 15.1.

Software: the software applications to be delivered to the Customer by Encodian under this agreement as offered by Encodian and accepted by the Customer when the Customer placed its order to receive the software, as more particularly described in the Documentation.

Source Code: the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation.

Third-Party Software: the software programs proprietary to third parties which are provided to the Customer in connection with this Licence including amendments, updates, modifications, new versions and new releases made to the same.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

- 1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Clause headings do not affect the interpretation of this Licence.
- 1.8 **Writing** or **written** includes e-mail.
- 1.9 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. SOFTWARE DELIVERY AND LICENCE

- 2.1 Encodian shall deliver the Software electronically to the Customer's System.

- 2.2 Subject to the Customer paying Encodian the Licence Fee in accordance with this Licence or subject to Encodian granting the Customer a Free Trial, Encodian grants the Customer the non-exclusive, non-transferable right (subject to clause 14) to use and to permit the Licensed Users to use, for the Licence Term, the Documentation and the Software in object code form, on a single Microsoft tenant, on the Customer's System, for the Customer's own internal operational purposes related to the Business.
- 2.3 The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.4 Encodian shall provide or make available to the Customer from time to time copies of the Documentation containing information for the proper use of the Software. Such Documentation may be supplied in electronic form.
- 2.5 The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the Software and for training the Customer's personnel in use of the Software. The Customer shall ensure that all Encodian's proprietary notices are reproduced in any such copy.
- 2.6 The Customer may provide copies of the Documentation to any third party referred to in clause 7.2 who needs to know the information contained in it for the Permitted Purpose.
- 3. TRANSFER OR REPRODUCTION OF THE SOFTWARE AND CUSTOMER'S INDEMNITY**
- 3.1 The Customer may make such copies of the Software as are reasonably necessary for use in accordance with this Licence and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Software.
- 3.2 Encodian shall at all times own all copies of all or any part of the Software. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the Software a clearly visible label indicating that the copy is the property of Encodian and reproducing Encodian's proprietary rights notice. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Software shall be maintained in such copies and shall display when the software is run. The Customer shall keep all copies of the Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control. The Customer shall record the number and location of all copies of the Software and provide such information to Encodian on Encodian's written request.

- 3.3 The Customer shall not:
- (a) sub-license, rent, lend, assign or transfer in any other way this Licence or the Software to any person without the prior written consent of Encodian;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance; or
 - (c) give access to the Software to users who are not employees, agents or independent contractors of the Customer.

3.4 The Customer shall defend, indemnify and hold harmless Encodian against claims actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software, any Maintenance Release or Documentation, save to the extent that such claims, actions, proceedings, losses, damages, expenses and costs arose as a result of Encodian's wrongful acts or omissions.

4. USE AND ADAPTATION OF ENCODIAN SOFTWARE

- 4.1 The Customer may use the Software with other software.
- 4.2 The Customer may not make adaptations or variations of the Software without the prior written consent of Encodian.
- 4.3 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Software, except as permitted by law.
- 4.4 Without affecting its other obligations under this agreement, the Customer shall comply with Encodian's Acceptable Use Policy.

5. MAINTENANCE RELEASES

Encodian will provide the Customer with all Maintenance Releases generally made available to its customers. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

6. LICENCE FEE

- 6.1 Unless the Customer is using the Software under a Free Trial, the Customer shall pay the Licence Fee to Encodian for the use of this Licence in accordance with this clause 6.
- 6.2 Encodian shall invoice the Customer for the Licence Fee either:
- (a) where the Customer has agreed to pay the Licence Fee on a monthly basis, monthly in advance; and

- (b) where the Customer has agreed to pay the Licence Fee on an annual basis, annually in advance.
- 6.3 If the Customer fails to make any payment due to Encodian under this Licence by the due date for payment, then, without limiting Encodian's remedies elsewhere under this Licence or in law, the Customer shall pay interest on the overdue amount at a monthly rate of 1.5%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.4 The Licence Fee:
 - (a) shall be payable in the currency offered by Encodian;
 - (b) is non-cancellable and non-refundable; and
 - (c) is exclusive of VAT, which shall be added to the Licence Fee at the appropriate rate, if applicable.
- 6.5 Encodian shall be entitled to increase the Licence Fee at the start of each Renewal Period upon 1 calendar month's prior notice to the Customer.

7. CONFIDENTIALITY AND PUBLICITY

- 7.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Licence (Permitted Purposes).
- 7.2 In relation to the Customer's Confidential Information:
 - (a) For the duration of this Licence and for a period of seven years thereafter, Encodian shall treat as confidential all Confidential Information of the Customer supplied under this Licence. Encodian shall not divulge any such Confidential Information to any person except to its own employees, and then only to those employees who need to know it for the Permitted Purposes. Encodian shall ensure that its employees are aware of, and comply with, this clause 7; and
 - (b) Encodian may provide any of its subcontractors with such of the Customer's Confidential Information as they need to know for the Permitted Purposes, provided that each relevant subcontractor has first entered into a written obligation of confidentiality owed to Encodian in terms similar to clause 7.2(a).
- 7.3 In relation to Encodian's Confidential Information:

- (a) For the duration of this Licence and for a period of seven years thereafter, the Customer shall treat as confidential all Confidential Information of Encodian contained or embodied in the Software or Documentation, or otherwise supplied to the Customer during the performance of this Licence; and
 - (b) the Customer shall not, without the prior written consent of Encodian, divulge any part of Encodian's Confidential Information to any person other than the Licensed Users who need to know it for the Permitted Purposes.
- 7.4 The Customer undertakes to ensure that the persons referred to in clause 7.3(b) are made aware, before the disclosure of any part of Encodian's Confidential Information, that the same is confidential and that they owe a duty of confidence to Encodian in terms similar to clause 7.3(a) (which the Customer shall ensure is adhered to).
- 7.5 The restrictions imposed by clause 7.1, clause 7.2 and clause 7.3 shall not apply to the disclosure of any Confidential Information which:
- (a) is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 7;
 - (b) before any negotiations or discussions leading to this Licence was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or
 - (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).
- 7.6 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Software becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

- 7.7 No party shall make, or permit any person to make, any public announcement concerning this Licence without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or any court or other authority of competent jurisdiction.
- 7.8 Encodian may compile information related to the performance of the Software for the purposes of improving the Software and provided that such information does not identify any Licensed Users or personal data.
- 7.9 Unless the Customer requests otherwise in writing, Encodian may include the Customer's name and logo in its marketing materials and on its website.
- 7.10 This clause 7 shall remain in full force and effect in the event of any termination of the Licence or this Licence.

8. DATA PROTECTION

Each party shall comply with all Applicable Data Protection Laws in connection with the supply, receipt and use of the Software.

9. EXPORT

- 9.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Licence (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 9.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

10. WARRANTIES

- 10.1 Encodian warrants and represents that, subject to clause 10.5 the Software and Documentation are proprietary to Encodian and that it has the right to license all Intellectual Property Rights in and to the Software and the Documentation;
- 10.2 The sole remedies for breach of the warranty in clause 10.1 are set out in clause 15.
- 10.3 The warranty set out in clause 10.1 is in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Licence. Without limitation, Encodian specifically denies any implied or express representation that the Software will be fit:
- (a) to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Documentation as being compatible with the Software; or
 - (b) to operate uninterrupted or error-free.
- 10.4 Any unauthorised modifications, use or improper installation of the Software by or on behalf of the Customer shall render all Encodian's warranties, representations, indemnities and obligations under this Licence null and void.
- 10.5 Encodian makes no warranty or representation in connection with the performance of any Open-Source Software or Third Party Software contained within the Software which, in each case, is provided "as is" and expressly subject to the disclaimer in clause 10.3.
- 10.6 Each party warrants that it has full capacity and authority, and all necessary licences (or sub-licences as the case may be), permits and consents, to enter into and perform this Licence.

11. OWNERSHIP

- 11.1 The Intellectual Property Rights in the Software and the related Documentation are, and shall remain, the property of Encodian or its third party licensors and Encodian reserves the right to grant a licence to use the Software or Documentation to any other party or parties.
- 11.2 The Customer acquires no rights in or to the Software or the Documentation other than those expressly granted by this Licence.

- 11.3 The Customer acknowledges and agrees that Encodian and/or its licensors own all intellectual property rights in the Software and the Documentation including in the product of any development, design and/or integration work that Encodian may carry out for the Customer and including where any elements of such products were developed as a result of or using the Customer's ideas, suggestions or other feedback supplied by the Customer. Except as expressly stated herein, this Licence does not grant the Customer any rights to, under or in, any Intellectual Property Rights or any other rights or licences in respect of the Software and/or the Documentation or the product of any development, design and/or integration work that Encodian may carry out for the Customer.
- 11.4 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that Encodian may consider necessary or desirable to perfect the right, title and interest of Encodian in and to the Intellectual Property Rights in the Software and the Documentation.
- 11.5 The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Software and the Documentation and shall promptly report to Encodian any such infringement that comes to its attention. In particular, the Customer shall:
- (a) ensure that each Licensed User, before starting to use the Software, is made aware that the Software and the Documentation is proprietary to Encodian or third parties and that it may only be used and copied in accordance with this Licence; and
 - (b) not permit any person other than a Licensed User to have access to the Software or the Documentation without the prior written consent of Encodian, who may require that such third party executes a written confidentiality agreement before being given access to the Software.

12. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

12.1 Encodian shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Software, any Maintenance Release or Documentation, provided that, if any third party makes a claim, or notifies an intention to make a claim against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (IPR Claim), the Customer:

- (a) as soon as reasonably practicable, gives written notice of the Claim to Encodian, specifying the nature of the IPR Claim in reasonable detail;
- (b) does not make any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of Encodian (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) gives Encodian and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Encodian and its professional advisers to examine them and to take copies (at Encodian's expense) for the purpose of assessing the IPR Claim; and
- (d) subject to Encodian providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as Encodian may reasonably request to avoid, dispute, compromise or defend the IPR Claim.

12.2 Without prejudice to clause 12.4, Encodian shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

- (a) caused or contributed to by the Customer's use of the Software in combination with software not supplied or approved in writing by Encodian; or
- (b) based on use of any version of the Software other than the latest version supplied by Encodian, if such claim could have been avoided by the use of such supplied version.

12.3 If use of the Software becomes, or, in the opinion of a UK lawyer of at least ten years call, is likely to become, the subject of any IPR Claim, Encodian may:

- (a) replace all or part of the Software with functionally equivalent software or documentation without any charge to the Customer;
- (b) modify the Software as necessary to avoid such claim, provided that the Software (as amended) functions in substantially the same way as the Software before modification; or
- (c) procure for the Customer a licence from the relevant claimant to continue using the Software.

12.4 If:

- (a) use of the Software is determined in a court of law to be infringing;
- (b) Encodian is advised by a lawyer qualified under the law applicable to the alleged infringement of at least ten years' call that use or possession by the Customer of the Software and/or the Documentation in accordance with this Licence is likely to constitute infringement of a third party's rights; or
- (c) an injunction or similar order is granted in connection with any claim falling within the scope of clause 12.1 which prevents or restricts the use or possession by the Customer of the Software and/or the Documentation in accordance with this Licence,

and Encodian is unable, after best efforts, to procure for the Customer the right to continue using the Software, or to provide the Customer with functionally equivalent non-infringing software, this Licence will be terminated.

12.5 Notwithstanding any other provision in this Licence, clause 12.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software or Third-Party Software.

12.6 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

13 LIMITATION OF LIABILITY

13.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or

- (c) any matter for which it would be unlawful for the parties to exclude liability.
- 13.2 Subject to clause 13.1, Encodian shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, production, reputation or goodwill;
 - (b) any loss or corruption (whether direct or indirect) of data or information;
 - (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - (d) any loss or liability (whether direct or indirect) under or in relation to any other agreement.
- 13.3 Clause 13.2 shall not prevent claims, which fall within the scope of clause 13.4, for:
 - (a) direct financial loss that are not excluded under any of the categories set out in clause 13.2(a) to clause 13.2(d); or
 - (b) tangible property or physical damage.
- 13.4 Subject to clause 13.1, Encodian's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Licence or any collateral contract shall not exceed the cap.
- 13.5 In clause 13.4 and this clause 13.5:
 - (a) Cap. The cap is one hundred per cent (100%) of the total charges in the Contract Year in which the breach of contract, tort, duty, misrepresentation or other default attributable to Encodian occurred; and
 - (b) Total charges: The total charges means all sums paid to Encodian by the Customer under this Licence in the Contract Year in which the breach of Licence, tort, duty, misrepresentation or other default attributable to Encodian occurred.
- 13.6 Subject to clause 13.1, Encodian shall not be liable for (and the Customer assumes sole responsibility for) the results obtained from the use of the Software and the Documentation by the Customer, and for conclusions drawn from such use.

13.7 Unless the Customer notifies Encodian that it intends to make a claim in respect of an event within the notice period, Encodian shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14. ASSIGNMENT AND SUBLICENCEING

14.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Licence without the prior written consent of Encodian.

14.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15. TERM AND TERMINATION

15.1 This Licence shall, unless otherwise terminated as provided in this clause 15 or clause 24, commence on the Commencement Date and shall continue for the Free Trial Period (if any) and/or the applicable Initial Licence Term and, thereafter, this Licence shall:

(a) where the Customer has agreed to pay the Licence Fee on a monthly basis, be automatically renewed for successive periods of one month; or

(b) where the Customer has agreed to pay the Licence Fee on an annual basis, shall:

(i) if the Customer has paid the invoice for the Initial Licence Term (and for any successive periods of one year) otherwise than through Encodian's Online Portal, terminate without notice at the end of the Initial Licence Term (or relevant successive period) unless the parties agree in writing that the term of this Licence shall be extended for 1 year; or

(ii) if the Customer has paid the invoice for the Initial Licence Term (and for any successive periods of one year) through Encodian's Online Portal, be automatically renewed for a successive period of one year.

15.2 If the parties have agreed in writing that this Licence shall be subject to a Free Trial and the Customer has not, before the expiry of the Free Trial Period, paid a Licence Fee, this Licence shall terminate automatically at the end of the Free Trial Period.

- 15.3 If either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Licence Term or any Renewal Period, in which case this Licence shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Period; or
- 15.4 Encodian may terminate this Licence immediately on notice to the Customer if there is a change in Control of the Customer.
- 15.5 Without prejudice to any rights that have accrued under this Licence or any of its rights or remedies, either party may at any time terminate this Licence with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this Licence on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any term of this Licence (other than failure to pay any amounts due under this Licence) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this Licence in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Licence;
 - (d) the other party makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed; or
 - (e) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 15.6 The parties acknowledge and agree that any breach of clause 2, clause 3, clause 4, clause 7, clause 9 or clause 14 shall constitute a material breach of a term for the purposes of this clause.
- 15.7 On termination or expiry of this Licence for any reason, the Customer shall as soon as reasonably practicable but in any event within 20 days after termination of this Licence:

- (a) return, destroy or permanently erase (as directed in writing by the other party) the Documentation and any other documents, handbooks or other information or data provided to it by Encodian containing, reflecting, incorporating or based on Confidential Information belonging to Encodian. If required by Encodian, the Customer shall provide written evidence in the form of a letter signed by one of its directors no later than 20 days after termination of this Licence that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 7); and
 - (b) return, destroy or permanently erase (as directed in writing by Encodian) any Software from the Customer's System. The Customer shall provide written confirmation in the form of a letter signed by one of its directors no later than 20 days after termination of this Licence that this software has been deleted.
- 15.8 On termination or expiry of this Licence for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to Encodian.
- 15.9 Other than as set out in this Licence, neither party shall have any further obligation to the other under this Licence after its termination.
- 15.10 Any provision of this Licence which expressly or by implication is intended to come into or continue in force on or after termination of this Licence, including clause 1, clause 7, clause 11, clause 13 and clause 15 shall remain in full force and effect.
- 15.11 Termination or expiry of this Licence shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Licence which existed at or before the date of termination or expiry.
- 15.12 Notwithstanding its obligations in this clause 15 if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 16. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Licence or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17. RIGHTS AND REMEDIES

Except as expressly provided in this Licence, the rights and remedies provided under this Licence are in addition to, and not exclusive of, any rights or remedies provided by law.

18. ENTIRE LICENCE

18.1 This Licence constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Licence.

19. VARIATION

19.1 Encodian may vary these Conditions from time to time on giving the Customer at least 1 calendar month's notice in writing. If the Customer does not accept the variation, the Customer may, within 1 calendar month of being notified of the variation by Encodian (Review Period), terminate this Licence on 7 Business Days' written notice to Encodian. The Customer's continued use of the Software after the Review Period will constitute the Customer's acceptance of the variation.

19.2 No other variation of this Licence shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. SEVERANCE

20.1 If any provision or part-provision of this Licence is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Licence.

20.2 If any provision or part-provision of this Licence is deemed deleted under clause 20.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. COUNTERPARTS

This Licence may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Licence.

22. THIRD PARTY RIGHTS

No person other than a party to this Licence shall have any rights to enforce any term of this Licence.

23. NO PARTNERSHIP OR AGENCY

23.1 Nothing in this Licence is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. FORCE MAJEURE

Neither party shall be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Licence by giving 30 days' written notice to the affected party.

25. NOTICES

25.1 Any notice required to be given under this Licence shall be in writing and shall be:

(a) if given by Encodian:

(i) delivered by commercial courier to the Customer's registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the following address (or an address substituted in writing by the Customer): the email address for the Customer provided to Encodian.

- (b) if given by the Customer, sent by email to the following address (or an address substituted in writing by Encodian): admin@encodian.com.

25.2 Any notice shall be deemed to have been received:

- (a) if delivered by courier, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- (b) if sent by email at the time of the transmission provided that no bounceback or out of office message is received.

25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. GOVERNING LAW

This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).